

REMARKS

The above Amendments and these Remarks are in reply to the Office Action mailed October 6, 2005. Currently, claims 1-60 are pending. Claims 20-30, 42-46 and 53-56 are allowed. Applicants have amended claims 2, 6 and 41. Applicants respectfully request reconsideration of claims 1-19, 31-41, 47-52 and 57-60.

I. Rejection of Claims under 35 U.S.C. §112

Examiner rejected claims 37-39, 41, 47-49, 51-52 and 57-60 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which Applicant regards as the invention. In particular, Examiner states that claim 37 recites an apparatus in the pre-amble, but several steps of a method appear in the claim body, and thus it is not clear whether the claim is an apparatus or a method claim. Examiner rejects claims 38-39, 41, 47-49, 51-52 and 57-60 for the same reason.

Claims 37-39, 41, 47-49, 51-52 and 57-60 are apparatus claims. Independent claims 37, 47 and 57 recite "An apparatus" in the preamble. The apparatus in each claim includes a communication interface, one or more storage devices and one or more processors in communication with the one or more storage devices and communication interface. The processors are programmed to perform a method. Although the processors are programmed to perform a method, the claims are each directed to an apparatus. Dependent claims 38-39, 41, 48-49, 51-52 and 58-60 each recite "An apparatus according to" in their corresponding preamble.

Examiner notes that claim 41 recites a preamble of, "One or more processor readable storage devices," referring to claim 37, while claim 37 recites "one or more processors." Applicant has amended the preamble of claim 41 to recite, "An apparatus according to claim 37," to correspond with the preamble of claim 37.

For the above reasons, Applicants assert that claims 37-39, 41, 47-49, 51-52 and 57-60 distinctly claim an apparatus, and that the rejection under 35 U.S.C. §112 should be withdrawn.

II. Rejection of Claims under 35 U.S.C. §101

Examiner rejected claims 37-41, 47-52 and 57-60 under 35 U.S.C. §101 stating that the

claimed invention is directed to non-statutory subject matter. Examiner states that independent claims 37, 47 and 57 are drawn to functional descriptive material not claimed as residing on a computer readable medium, citing MPEP 2106 (IV)(B)(1)(a). In particular, Examiner cites to the first paragraph of the cited MPEP section regarding “data structures” and states that claims, while defining a medium, do not define a “computer readable medium” and are thus non-statutory.

Applicants assert that claims 37-41, 47-52 and 57-60 are statutory under 35 U.S.C. §101. The first paragraph of MPEP 2106 (IV)(B)(1)(a) discusses claims directed towards “data structures.” In particular, the first paragraph states that, “claims to data structure” do not define any structural and functional interrelationships between the data structure and the other claimed aspects of the invention which permit the data structure’s functionality to be realized.

Claims 37-41, 47-52 and 57-60 are directed to an apparatus. The apparatus includes a communication interface, one or more storage devices and one or more processors, wherein the processors are “in communication with the one or more storage devices and communication interface.” The three recited elements of the independent claims have a functional relationship because the processors communicate with the communication interface and one or more storage devices. The processors of the apparatus are programmed to perform a method. Nowhere in the claims is an actual “data structure” mentioned.

The third paragraph of MPEP 2106 (IV)(B)(1)(a) states:

Office personnel should determine whether the computer program [often cited as part of a claim] is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim.

In this case, the claims are directed towards an apparatus, considered a statutory machine. Thus, the claims should be statutory irrespective of whether or not a computer program is included in the claim.

The third paragraph of MPEP 2106 (IV)(B)(1)(a) further states:

Only when the claimed invention taken as a whole is directed to a mere program listing, i.e., to only its description or expression, is it descriptive material *per se* and hence nonstatutory.

The claimed inventions of claims 37-41, 47-52 and 57-60, when taken as a whole, are not directed to a mere program listing. Rather, the embodiments claimed in claims 37-41, 47-52 and 57-60 are directed towards an apparatus, as discussed above with respect to the 35 U.S.C. 112 rejection.

For the above reasons, Applicants assert that claims 37-41, 47-52 and 57-60 are drawn to statutory subject matter, and that the rejection under 35 U.S.C. §101 should be withdrawn.

II. Rejection of Claims under 35 U.S.C. §102

Examiner rejected claims 1, 14 and 31 under United States Patent No. 5,546,475 (“*Bolle*”). Applicant respectfully traverses the rejection under *Bolle*.

Select features of embodiments of Applicant’s invention can be found in claim 1 which recites among other limitations:

creating a video of said scene conveying an illusion of a camera moving around said scene, said step of creating a video is based on said set of two or more images and said step of identifying foreground.

Bolle does not disclose the recited limitations of claim 1. *Bolle* discloses matching portions of a segmented image to a source image associated with a scene of produce. *Bolle* discloses, “In step 510, an image (a first image) of the scene is produced with the light 110 switched on. [...] In step 520, a second image of the scene is produced with the light switched off or set to a level below the level in step 510.” (col. 10, lines 20-30). A check is then performed to determine if each pixel of the first image is brighter than the pixel of the second image. If the pixel is brighter by more than a threshold value, the pixel is designated as part of the object. Otherwise, the pixel is designated as part of the background. (col. 10, line 59 to col. 11, line 4). One or more features of the object are determined, and the features are normalized. The features are then compared to reference object characteristics. (col. 13, lines 5-64).

Unlike the embodiment of the claimed invention, *Bolle* does not disclose, “creating a video of said scene conveying an illusion of a camera moving around said scene, said step of creating a video is based on said set of two or more images and said step of identifying foreground.” In particular, *Bolle* does not disclose “creating a video” of any type. *Bolle*

segments an image of produce from two images having different lighting levels, and compares features of the produce image to stored features. *Bolle* also does not disclose “conveying an illusion of a camera moving around said scene.” Unlike the claimed invention, *Bolle* takes two images of a produce object, and processes the images. *Bolle* does not mention conveying any illusion of camera motion around any scene.

Because *Bolle* fails to disclose each limitation of claim 1, Applicant asserts that claim 1 is patentable over the cited art. Dependent claims 2-19, including claim 14, ultimately depend on patentable claim 1. Applicant respectfully submits that these claims should be allowable for the reasons stated above, as well as for the distinguishable elements they recite.

Independent claim 31 includes limitations similar to those of claim 1 which distinguish claim 1 from the cited art, and should be patentable over the cited art for the reasons stated above. Dependent claims 32-36 ultimately depend on patentable claim 31. Applicant respectfully submits that these claims should be allowable for the reasons stated above, as well as for the distinguishable elements they recite.

III. Allowable Subject Matter

Allowed claims

Examiner indicated that claims 20-30, 42-46 and 53-56 are allowed. Applicant thanks the Examiner for this determination.

Objected to, but allowable if rewritten to include base claims

Examiner also indicates that claims 2-13, 15-19, 32-36, 40 and 50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant thanks the Examiner for this determination, and has amended claims 2 and 6 to incorporate the limitations of base claim 1. Claims 3-5 depend on claim 2 and claims 7-13 depend on claim 13. Applicant respectfully submits that claims 2-13 are now in condition for allowance, and request the rejection be withdrawn.

Though Applicant asserts that claim 1 is patentable, claims 2 and 6 have been amended in order to expedite prosecution. Applicant respectfully submits that claims 15-19, 32-36, 40 and 50 are in condition for allowance as discussed above, in addition to being allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Rejected for form, but similar to allowed claims

Applicant submits that claims 47-52 and 57-60 are in condition for allowance. The rejections under 35 U.S.C. §112 and 35 U.S.C. §101 should be withdrawn as discussed above. Independent claim 47 recites similar distinguishing limitations as allowable independent claim 42. Independent claim 57 recites similar distinguishing limitations as allowable independent claim 53. Thus, Applicants respectfully submit that independent claims 47 and 57 should be patentable for the same reasons as the allowed claims. Dependent claims 48-52 and 58-60 ultimately depend on patentable claims 47 and 57, respectively, and should be patentable for the same reasons in addition to the limitations they recite.

Rejected for form, but similar to claims Applicant asserts are patentable

Applicant submits that claims 37-41 are in condition for allowance. The rejections under 35 U.S.C. §112 and 35 U.S.C. §101 should be withdrawn as discussed above. Independent claim 37 recites similar distinguishing limitations as allowable independent claim 1, which should be patentable over *Bolle*. Thus, Applicants respectfully submit that independent claim 37 should be patentable for the same reasons as patentable claim 1. Dependent claims 38-41 ultimately depend on patentable claim 1, and should be patentable for the same reasons in addition to the limitations they recite.

III. Conclusion

Based on the above amendments and these remarks, reconsideration of claims 1-19, 31-41, 47-52 and 57-60 is respectfully requested.

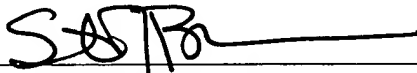
The Examiner's prompt attention to this matter is greatly appreciated. Should further questions remain, the Examiner is invited to contact the undersigned attorney by telephone.

Enclosed is a PETITION FOR EXTENSION OF TIME UNDER 37 C.F.R. § 1.136 for extending the time to respond up to and including today, March 6, 2006.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 501826 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

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